

UNIVERSAL SERVICES IN EU LAW IN THE ERA OF LIBERALIZATION

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Abstract

Universal services were used in many laws as a form of state intervention. The European lawmaker also introduced this concept to guarantee the provision of certain services to all citizens in all Member States. However, liberalization of different sectors of the economy strengthens competition and removes state monopolies. The aim of this article is to determine whether the concept of universal services is still needed. Doubts about the need for that concept arise because of another European concept of services of general economic interest, which enables particular Member States to introduce certain public services. The article will focus on several sectors of the economy in which universal services were introduced and will try to justify maintaining such services.

Keywords: Universal Services, Public Services, Services of General Economic Interest

Introduction

In general, universal services aim to prevent citizens from social exclusion. By such services, member states can assure the availability of certain services for society in those cases in which the market would otherwise fail. This means that universal services are a means of state intervention in the market. Although such intervention leads to the restriction of competition, the European lawmaker recognized that in many situations pure economic goals like efficiency and economic progress are less important than social goals. It can be seen in the concept of universal services that state intervention in the market is more important than the mechanism of competition itself. However, the introduction of universal services in specific sectors of the economy does not occur often. Some even argue that this appears to be a dying concept (van Eijk, p. 3). It was introduced only because the liberalized sectors of the economy were not able to guarantee every member of society specific services, and by the time the market would be able to do so, the universal services would no longer be needed.

This paper aims to explain the role of universal services in EU law in the situation in which many sectors of the economy were liberalized. Especially it will try to find common features of universal services to define where such services must be introduced. The last aim of the article is to determine whether such a legal concept is still needed, since the European lawmaker introduced a very similar concept of general economic interest and liberalized many sectors of the EU economy.

Definition of universal service

Universal services have many definitions. There are many European legal acts that describe this concept. According to Art. 3 of Directive 2002/22/EC, a universal service should be considered a service that is available in specified quality for all end users, regardless of their geographical location, taking into account the specific national conditions and at an affordable price (OJ L 108/51, 24/04/2002). In addition, in the European

Commission Communication - Services of general interest in Europe from 2001, the European Commission concluded that the universal service, in particular the individual definition of this type of service, is an important part of the liberalization of service sectors, such as telecommunications, in the European Union. It is a universal service to ensure passage from the provision of services by monopolies to a fully competitive market. Member States are responsible to determine the conditions to ensure the provision of universal services (Communication from the Commission—Services of General Interest in Europe [2001] OJ C/17/4).

Similarly, universal services are defined in the Green Paper on services of general interest of 2003. It emphasizes that the aim of these services is to ensure access to everyone, regardless of their economic, social or geographical situation, to certain services. Moreover, the concept of universal service in the liberalized economy ensures that everyone will have access to a particular service at an affordable price, and the quality of the provision of this service will be maintained at a constant level (Commission Green Paper of 21 May 2003 on services of general interest, COM(2003) 270 final, OJ C 76 25.03.2004, p. 14 and 16).

Sauter argues that universal services are characterized by their universality for consumers and a set of obligations that are imposed on undertakings (Sauter, 2008, p. 10). Carter adds that there is no uniform definition of universal services but that, based on American law, such services have several core features. These features are availability (level, price and quality), affordability (low income services), accessibility and continuity (Carter, 2010, p. 16). Nenova adds that universal service can be both a simple and a complex concept. A simple goal of universal services, for example, is to provide energy for every home. On the other hand, there are issues that make this concept more complex – human rights and state intervention (Nenova, 2006, p. 1). Murrone and Collins add that some universal services cannot be provided without state intervention, because they are unprofitable for companies (Murrone, Collins, 1995, p. 4).

The reason for introducing universal services

The European Commission presents the idea of introducing a universal service. The aim of the EU legislator is primarily to bring free competition to the various sectors of the economy. Due to the fact that it is a long process, the aim of universal service is primarily to fulfil social needs. These needs can be fulfilled by state monopolies, but they are often not able to provide these services to every user or to provide them at high quality or affordable prices. This means that the concept of universal service is a way to eliminate the failure of state monopolies. Furthermore, as already indicated, the concept is transient. It forces the state monopolies to provide services of a specified quality, but the EU legislator is seeking to liberalize certain sectors of the economy and to eliminate this type of monopolies.

Some argue that universal services are crucial for politicians and policymakers, because their aim is to redistribute certain services among the poor and underdeveloped regions (Estache, Laffont, Zahn, 2004, p. 2). In the US, there is also a debate on the concept of universal services. Some authors argue that this concept is flexible and changes over time. They also contend that it is determined by many various contexts, in which members of society use different services (Cherry, Wildman, Hammond, 1999, p. 6). Moreover universal services are influenced by many different government policies (Nenova, 2006, p. 1).

Davies and Szyszczak argue that universal service obligations play an important role in the state's task. By such obligations, a state can redistribute public services to those consumers who cannot afford them in real market situations (Szyszczak, Davies, Andenaes, Bekkedal, 2011, p. 161). Undoubtedly, the liberalization process leads to the development of competition, which in turn produces products and services of better quality and at lower prices. But this process can be long and still leave specified services too expensive for some

part of society. It can even be said that the dissemination of universal service and its affordability speaks for its disqualification as a universal service in the view of the lawmaker.

As Micklitz states, universal services aim to prevent social exclusion, which may arise as a result of privatization of state-owned monopolies. This concept allows for the purchase of specific services by those users, who cannot afford to purchase them at market prices (Micklitz, 2009, p. 1). In relation to the position of Micklitz, it can be concluded that the universal services are related to fundamental human rights. Universal services are so essential that everyone should have access to them.

The reason why universal services are being introduced is the failure of the market to deliver such services. In many member states, liberalized public services will not be provided in the pure market regime (Wollmann, Marcou, 2010, p. 3). Still, since such services are simply unprofitable for companies, state intervention is required.

As we can see, there are many reasons why the lawmaker introduces universal services. The most important reason is to prevent the exclusion from society those who do not have access to very basic services. Of course, basic services have not been defined, and it is obvious that they can change over time. Furthermore, societies differ from one to another with regard to which services are deemed to be universal. So, what is the role of EU law? It can be argued that the European lawmaker should decide which services are essential for society, which should be available for everyone in every member state, and provide them.

Universal services and services of general economic interest

The above mentioned interpretation of universal services is not consistent with the concept of services of general economic interest. Universal services are those that are so common that their provision should be guaranteed to everyone. When introducing such services, the demand for a given service is not tested nor is it determined whether such services are needed in a particular territory. It is considered that universal services are so basic that everyone should have guaranteed access to them. This means that the universal services will often overlap with services of general economic interest. However, the latter are not as 'basic' or even necessary for the whole society.

Thus, the concept of universal service assumes that particular services will be provided in the whole territory of a Member State. Therefore, it is clear that this concept is similar to the concept of services of general economic interest, with the proviso that the latter may relate only to a particular part of a Member State.

In distinguishing between universal services and services of general economic interest, another difference, perhaps the most important, should be mentioned. The concept of services of general economic interest has its source in the laws of the Member States. Consequently, it is up to each State to decide what needs each State should provide. Consequently, each Member State decides whether to recognize a specific service as a service of general economic interest. The concept of universal service was created by the legislation of the European Union. The EU directives state which services should be considered universal and what duties are charged to the Member States. Consequently, in the case of universal services, the decision-maker is the EU legislature, not the Member States. The latter are responsible only to ensure the provision of universal services within their territory. Moreover, the European Union legislature decided that universal services such a basic dimension that they must be provided in each of the Member States, as the result of which such services are regarded as fundamental in the European Union. Such a definition has been confirmed by the Court of Justice of the EU in the Corsica Ferries case, in which the Court held that the universal service was based on the company's commitment to provide the service at any time to every user (Case C-266/96 Corsica Ferries, ECR 1998 I-3949, para 45).

Neergaard argues that, in the EU secondary law terms, universal service and services of general economic interest are used interchangeably, which is misleading especially in the distinction between the general interest of the European Union and the individual interests of the Member States (Neergaard, Nielsen, Roseberg 2008, p. 73).

The European Commission stated that, if universal service is implemented in a specific sector of the economy, everyone should have the right to access those services that are considered to be important. This also means that companies are obliged to provide such services and to ensure certain quality, availability in a given territory and affordability. Moreover, universal service is a dynamic concept that must be updated from time to time in each of the sectors in which services are rendered universally (Communication from the Commission Services of general interest, including social services of general interest: a new European commitment, COM (2007) 724 final, p 10).

As rightly pointed out, Micklitz's concept of universal service is not a general approach adopted for many sectors of the economy. Consequently, an analysis requires the separate examination of each of the sectors in which universal service is to be introduced, because they are so related to the specifics of a particular sector that they cannot be tested together (Cremona, 2011, p. 74). Universal services are characteristic of several sectors of the economy, particularly telecommunications, postal services and energy.

Universal services in the telecommunications sector

The concept of universal service originated in the US. It was used for the first time in 1907, when AT&T's commercial aim was to have a telephone in every home. In 1914, this concept evolved into interoperability of different telephone service providers (Gale, 1997, p. 2). According to Garnham, universal service in the telecommunication sector is access to telecommunications services. Such access is understood as essential for existence in society as a basic element of freedom of expression and communication (Murrone, Collins, 1995, p. 4). A report from the US Department of Commerce stated that the concept of universal service assumes that everyone should be able to communicate with each other by telephone at affordable prices and on equal footing (Telecommunications in the Age of Information: The NTIA Infrastructure Report, DIANE Publishing 1994, p. 292). Markova has a similar view arguing that, in telecommunications, universal service consists of connecting individual households to a public telecommunications network (Markova, 2008, p. 105). Collins and Murrone claim that such services consist of universal access to voice telephony at prices affordable for everyone (Collins, Murrone, 1996, p. 76). Many authors agree that universal services in telecommunications consist of access to telecommunication networks for every member of society at affordable prices. Initially, as universal services were recognized, they included only voice connections.

The telecommunications sector was the first sector in the EU in which universal services were introduced, because in many places private operators refused to construct the technical infrastructure necessary to provide telecommunications services due to the very small number of potential customers. This economic calculation caused such operators to decide to leave this type of areas without the benefit of this type of services. This resulted in the introduction of the first universal service in the Member States. Initially, it included services related to wholesale phone calls, separating provision of telecommunications services from maintaining technical infrastructure. One of the first directives in this sector of the economy was Directive 88/301/EEC on competition in the markets in telecommunications terminal equipment in 1988 (OJ L 131/73, 1998). In its preamble, the Commission noted that in the majority of Member States provision of telecommunications services is a full or partial state monopoly. Moreover, companies that provide telecommunications services are also often granted a monopoly on the supply of

telecommunications terminal equipment. This leads to a situation in which users do not have freedom to choose communication equipment that can meet their needs in terms of price and quality, regardless of their origin. The Directive changed this situation by requiring Member States to withdraw special or exclusive rights relating to the sale of terminal equipment. The provisions of the directive required Member States to allow all operators to import, market, connect, and maintain terminal equipment. The Member States were also required to provide anyone interested access to terminal equipment and to provide the parameters of these devices. This means that the market for these devices was liberalized, and end users were provided broad access to competing devices from different manufacturers.

The next step in the process of widening availability of terminal equipment in the telecommunications sector was Directive 91/263 /EEC of 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ L 128/1, 1991). The purpose of this directive was to enable an even broader choice of terminal equipment for users. It introduced uniform technical requirements for terminal equipment so that these devices could be offered in many Member States.

Partial liberalization of the telecommunications sector led to the adoption of Directive 95/51/ EC of 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services. On this basis, every limitation on the capacity of cable television networks was changed, and it was allowed to use the cable network for the provision of telecommunications services other than voice telephony. This directive also abolished restrictions on the connections between cable television networks and public telecommunications networks (OJ L 256/49, 26.10.1995).

In the end, Directive 96/19/EC of 1996 was issued amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (OJ L 074/13, 22.03.1996). The directive obliged Member States to abolish all exclusive or special rights for the provision of telecommunications services, including the establishment and maintenance of telecommunications networks required for the provision of these services. It was aimed to expand telecommunications networks further, including investments in new technology to extend the geographical coverage availability of telecommunications services.

The first universal service in the telecommunications sector was introduced on the basis of directive 98/10/EC of 1998 Directive 98/10/EC of the European Parliament and of the Council, of 26 February 1998 - on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (OJ L 101/47, 01.04.1998). In accordance with Art. 1, second sentence of the directive, its purpose was 'to ensure the availability throughout the Community of good quality fixed public telephone services and to define the set of services to which all users, including consumers, should have access in the context of universal service in the light of specific national conditions, at an affordable price'. The provisions of the directive required Member States to ensure the availability of telecommunications services for all users in their territory irrespective of geographical location. As is characteristic for universal services, the directive also required that the affordability of these services be assured, especially for such user groups as the elderly, people with disabilities and people with special social needs. Their provision was guaranteed throughout the territory of the Member States for every user at an affordable price.

Finally, directive 2002/22/EC of 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) was adopted (OJ L 108/77, 24.04.2002). This directive introduced more universal services in the telecommunications sector. It recognized as the universal service providing access to fixed

networks (so that users can make calls at local, regional and long distance, use fax machine and access the Internet), the creation of inquiry and a public directory, and provide public pay telephones. As in previous directives, the universal services introduced by Directive 2002/22/EC had to be provided throughout the territory of a Member State to fulfil quality requirements and offered to users at affordable prices.

This directive indicated that the introduction of universal services may cause some recipients of such services to pay prices that do not result from normal market conditions. For this reason, it is necessary to compensate companies that provide these services in such cases for losses, but such compensation cannot be permitted to distort competition. The directive also obliged Member States to designate companies that will be required to provide universal services. Moreover the choice of such an undertaking should be made on the basis of objective and non-discriminatory factors. This directive also pointed out how universal services should change in the future. It stated that the concept of universal service should be developed to reflect advances in technology, market development and user demand. This directive established the mechanism that enables broadening universal service in the future (Sauter, 2014, p. 187). This directive was amended by Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 337/11, 18.12.2009), which expanded the scope of universal service. As universal services were recognized, they included such services as connection (supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access), public pay telephones and other public voice telephony access points, telephone directory enquiry services, emergency services. Moreover such services should be provided with a specified quality and at affordable prices.

The directives reveal that there is still a place for universal services in the telecommunications sector. It is very important initially that such services were connected only with voice connections. After the development of new technologies, the European legislator found that some of those services are essential for every member of society. Moreover, as universal services were classified, such services included the public registry of telephone users or the maintenance of public telephone devices. Such services can be clearly recognized as essential for everyone in order not to be excluded from participating in society. Apparently, the European lawmaker decided that universal services cannot be associated with very basic services. As universal services can be recognized, so can other services that the European lawmaker believes to be needed for society. No clear criterion is used to select those services. Simply, such assessment is used by the lawmaker, and provisions of directives do not contain them.

Universal service in the postal sector

For many years, postal operators were obliged to provide universal service consisting of the delivery of letters and parcels to the whole territory of a Member State at uniform tariffs. To compensate for losses that occurred in unprofitable areas, like rural areas, states allowed a monopoly to provide certain services in those areas. Such a monopoly was granted by exclusive rights to provide, for example, parcel services or the delivery of letters up to a certain weight. Those exclusive rights were meant to provide universal services. Over time, the European legislator decided that the scope of exclusive rights had to be limited. During the late 1990s, the European Commission issued several directives that aimed to liberalize this sector of the economy, changing at the same time the scope of the universal services.

As occurred with the telecommunications sector, the introduction of universal service in the postal sector preceded its liberalization. The first directive liberalizing the sector was Directive 97/67/EC of 1997 on common rules for the development of the Internal market of Community postal services and the improvement of quality of service (OJ L 015/14 , 21.01.1998). The directive obliged Member States to ensure the provision of postal services of specified quality throughout the territory of the country and at affordable prices for all users. According to the directive, postal services were services involving the clearance, sorting, transport and distribution of postal items. The Directive set out that the universal service defined by it should be provided every working day and at least five days a week. Moreover, the services offered were to be identical under comparable conditions, meet certain quality requirements and take account changes associated with the development of technology, the economic environment and the demand from users.

The directive included a catalogue of services that were recognized as universal. These were: the clearance, sorting, transport and delivery of postal items up to two kilograms; receiving, sorting, transport and distribution of postal packages up to 10 kilograms; and services for registered items and insured items.

To implement the provision of universal service in the postal sector, Directive 97/67/EC required Member States to establish independent national regulatory authorities. These bodies were intended primarily to uphold the proper functioning of the universal service and to take action to prevent distortions of competition in the postal sector.

Directive 2002/39/EC of 2002 amending Directive 97/67/EC with regard to further opening Community postal services to competition (OJ L 176/21, 05.07.2002.) was another directive that liberalized the postal services market in the EU.

Full liberalization of the postal market occurred when Directive 2008/6/EC of 2008 amended Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ L 052/3, 27.02.2008). The Directive required Member States to withdraw all special or exclusive rights granted to undertakings providing postal services. The preamble of the Directive states that the gradual opening of postal markets to competition enabled universal service providers to carry out the modernization and restructuring necessary to ensure their functioning in a competitive economy. This Directive upheld previously defined universal services, which led to greater competition connected with its provision. By limiting the exclusive and special rights, the postal services sector can offer new services that are provided by new companies. This made it possible to expand the choice of services to users. The Directive required the full liberalization of the postal sector by the end of 2012.

Monti argues that full liberalization of the postal sector is controversial. In recent systems, universal services were provided by postal companies which were granted special or exclusive rights. Such rights entitled those companies to compensation for losses incurred in providing universal services. Monti quotes the European Commission, which stated that compensation granted to postal companies leads to overcompensation, which in turn causes postal companies to lose interest in introducing new products to the market or to rationalize their business (D. Chalmers, G. Davies, G. Monti, 2010, p. 1044). The Commission recognized that postal companies are now very different from what they were in the past. Today, postal companies are engaged in different economic activities that are not limited to postal services. The Commission recognized that reducing prices, improving the quality of products and services and introducing new services can occur only by the mechanism of competition. Such outcomes will be made by new companies that enter the market. This is why full liberalization of this sector was introduced. On the other hand, competition issues were more important than universal service itself. The Commission recognized that opening the markets and developing competition will guarantee the provision of such services. This

does not mean that there is no place for state intervention. Directive 2008/6/WE enables such intervention but clarifies that the State is no longer entitled to grant special or exclusive rights to companies. Instead, Member States can ensure the provision of public services in the postal sector by public procurement. By such selection, Member States can compensate companies for providing universal service or establish a mechanism for cost sharing by the operators of universal services and the end users.

New directive also specified the minimum requirements for universal service. Member States must guarantee that universal service is provided not less than five working days a week, which includes minimum one clearance and one delivery (Art. 3 of Directive 97/67/WE amended by directive 2008/6/EC).

Directives issued by the European Commission in the postal sector show that the treatment of universal services has evolved over time. For many years, such services were treated as essential for society, and Member States granted companies special or exclusive rights to ensure the provision of such services. This situation changed significantly in recent years when the European lawmaker simply recognized that competition issues are more important than maintaining forms of state monopolies. However, the full liberalization of the postal sector does not mean that there is no place for universal services. The European Commission still recognizes postal services as essential for society, and Member States are still responsible for providing such services. However, it can be done today by public procurement.

Universal services in the energy sector

The energy sector, which includes electricity and natural gas, is another sector of the economy under liberalization. This sector is characterized by the presence of state monopolies in each of the Member States, which have provided services related to the transmission, storage and supply of electricity and natural gas. Due to such a strong restriction of competition in the sector, in particular, barriers to entry, the European Commission decided to liberalize the sector gradually through the introduction of public services. The liberalization process was undertaken only at the end of the 1980s due to the resistance of the Member States, which wanted to maintain a monopoly on the provision of services in the field of energy.

The first directive that liberalized the electricity sector was Directive 96/92/EC of 1996 concerning common rules for the internal market in electricity (OJ L 027/20, 30.01.1997). Its aim was to introduce the first rules of competition in the sector. It established common rules for the generation, transmission and distribution of electricity and the functioning of the electricity sector, including principles of market access. First, the directive required Member States to designate a system operator who will be responsible for the operation, maintenance and expansion of the network and connections to other networks (Art. 7 of the Directive 96/92/EC). This directive allowed Member States to impose obligations of public service. It provided the following categories of such commitments: security (including security of supply), regularity, quality and price of supplies and environmental protection. The introduction of such obligations also contributed to the development of competition in the sector. This was reflected in the fact that Member States had to specify the obligations to provide these services in a way that was clearly defined, transparent, non-discriminatory and open to scrutiny. The Directive introduced the possibility of disabling some of its provisions relating to the liberalization of the electricity market, which had to restore the rule of competition in the market, to the extent that it was necessary to ensure the provision of public services.

Gradual liberalization of the electricity market in the EU went hand in hand with the liberalization of the natural gas market. Introduced in the late 1990s, directives liberalizing

these sectors had, according to the European Commission, become insufficient. For this reason, further introduction of competition rules was planned. By 2001, it was noted in the Communication from the Commission to the European Parliament that public services cover a wide range of aspects relevant to provide users with secure access to high-quality services in the provision of electricity and natural gas. The European Commission indicated that key issues for public services are the transmission, distribution and supply of energy. For this reason, such services should be regarded as public services, and the role of the community competition policy is to ensure the highest standards for these services (Communication from the Commission completing the internal energy market proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas, COM (2001) 125 final, 13.03.2001, p. 18-20).

Directive 96/92/EC was repealed and replaced by Directive 2003/54/EC of 2003 concerning common rules for the Internal market in electricity (OJ L 176/37, 15.7.2003). The preamble to the Directive stated that Member States should ensure that household customers and small businesses (if they deem it appropriate) have the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. Art. 3 of the Directive stipulated that Member States are obliged to ensure the right to use the universal service. This provision defined this service as the right to be supplied with electricity of a specified quality within a given territory at reasonable prices (These prices should also be easily and clearly comparable and transparent). Universal service was addressed to household customers and, where Member States have so considered, to small businesses (For small businesses, the Directive included such undertakings that employed fewer than 50 people and reached an annual turnover or balance sheet not exceeding EUR 10 million). This Directive was repealed and replaced by Directive 2009/72/EC of 2009 concerning common rules for the internal market in electricity (OJ L 211/55, 14.8.2009) and which broadened the scope of universal service. The most important change was the imposition on distribution companies the obligation to connect customers to their network under terms, conditions and tariffs which are in accordance with the Directive's provisions. The Directive also strengthened the rights of consumers by imposing on companies the duty to enable the consumption of data, create a single point of contact to provide consumers information about their rights and to create a dispute settlement mechanism.

Similar regulations liberalizing the market and introducing universal services were introduced in the gas sector. The first was Directive 98/30/EC concerning common rules for the internal market in natural gas (OJ L 204/12, 21.07.1998) aimed at the implementation of competition rules necessary for the liberalization of the sector and consequently the creation of the internal market in the natural gas sector. As in the case of the first directive on the electricity market, Directive 98/30/EC enabled Member States to impose on natural gas undertakings security tasks (including security of supply), regularity of supply, quality and price of supplies and environmental protection (Art. 3 of directive 98/30/EC).

Successively, Directive 2003/55/EC concerning common rules for the internal market in natural gas was introduced and repealed Directive 98/30/EC (OJ L 176/57, 15.7.2003). As was noted in the preamble, the direct threat to a fully functioning and competitive internal market was primarily the existing barriers to entry into this market. They are reflected in the restrictions to access to the network, storage, tariff policy, interoperability between systems and the varying degrees of opening the natural gas markets in the Member States. The aim of the Directive was precisely to eliminate such barriers and to create conditions that would enhance free competition and 'non-discriminatory, transparent and fairly priced (point 7 of Preamble to Directive 2003/55/EC)' access to the network.

This Directive allowed Member States to impose on undertakings operating in the gas sector obligations for the provision of services relating to security (including security of supply), regularity of supply, quality and price of supplies and environmental protection (including energy efficiency and conservation climate). However, the Directive did not oblige Member States to provide each user with access to natural gas, because this type of fuel can be replaced by another, unlike electricity (Prosser, 2005, p. 194). The most recent Directive 2009/73/EC concerning common rules for the internal market in natural gas, which repealed Directive 2003/55/EC, introduced similar changes in the natural gas sector as Directive 2009/72/EC concerning the energy sector.

Conclusion

Universal services still play an important role in EU law. Universal services differ from the concept of services of general economic interest in the sense that the European lawmaker decides which of the services can be regarded as universal services. This means that the European lawmaker can decide which of the services should be provided on specified conditions, price and quality to everyone in every Member State. This feature is the most important difference between universal services and services of general economic interest. In case of services of general economic interest, Member States decide which services can be classified in such a category. It is very important that Member States differ from one to another not only in terms of economic development but also in terms of the needs of society. Such diversity means that in Member States different services can be classified as a service of general economic interest. With universal services, there is no place for such diversity. Classification is made by the European legislator, and universal services are equal for all Member States.

Is there still a place for universal services? Even though many sectors in which universal services were present were liberalized, their scope and existence seems unthreatened. Liberalization led to improvement in competition and the elimination of state monopolies, which were responsible for providing different public services. In many cases, because of the market failure, some of these services would not be provided for everyone, which is why European law introduced the concept of universal service. In those circumstances in which providing a certain service would be not profitable for companies, there is still room for the state to guarantee universal services.

It is hard to find any other justification for introducing universal services in different sectors of the economy in EU law. However, many basic services can be classified as universal services. Even in the postal, energy and telecommunications sectors in which such services were introduced, this concept is related with services that are essential for everyone to exist in society. Examples are services such as an energy supply for every household and access to a telephone network. Without such services, it would be hard to exist in society. This is the main factor that is considered in providing universal services.

To sum up, the European lawmaker must decide whether to introduce universal services. If he decides to do so, then all Member States must guarantee that universal services will be provided. Therefore, by requiring the provision of universal services, the European lawmaker can introduce social policy goals.

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